

Proposed Lake Whatcom Watershed Seasonal Closure Exemption for Trail Maintenance, Reconstruction, and Construction

Discussion with County Council's Committee of the Whole

20 February 2023

Council's Charge

- At the behest of the Whatcom Mountain Bike Coalition (WMBC), in 2022 Council placed on the docket PLN2022-00006:

“Amend the Whatcom County Code to allow for an exemption to seasonal clearing activity closures in the Lake Whatcom watershed for trail maintenance and limited trail construction under certain circumstances.”

Concerns for Lake Whatcom

- Lake Whatcom is the **drinking water source** for approximately half the residents of Whatcom County (96,000 people).
- **Erosion, sedimentation, phosphorus, and other pollutants** associated with increased land clearing and development are of concern for a number of reasons including their impacts on water quality and beneficial uses such as fish, shellfish and drinking water.
- Stormwater is the **chief source for phosphorous and bacteria**.
- The lake is listed as an "**impaired water body**" on the 303(d) list under the Clean Water Act.
- It is the subject of an ongoing **TMDL process** (approved April 2016) to meet state water quality standards for dissolved oxygen, fecal coliform bacteria (FC), and phosphorus.

Purpose of the Seasonal Clearing Activity Limitations (WCC 20.51.410)

- The intent of seasonal clearing activity limitations is to *establish a more stringent standard for clearing activity* in highly valued water resource areas, environmentally sensitive areas, or areas where natural conditions are so unstable that clearing activity in the areas can result in hazardous conditions. *Implementation of* best management practices, including phased clearing, tree retention and *seasonal clearing limitations*, is intended to *limit the amount of exposed soils* on site that are susceptible to erosion at any one time, *thereby* improving site stability during development and *reducing potential for transport of dissolved pollutants and sediments off-site*.

Purpose (cont.)

- Seasonal clearing regulations were originally adopted in 1999 and finalized in 2005.
- They included measures to reduce potential erosion and sediment contributions from all land clearing activities during the winter/rainy months.
- The point was to apply clear and predictable regulations that did not call out specific types of development, but *to manage all land clearing activities uniformly and fairly*.

WMBC's Practices

- Working with Eric Brown, the WMBC president, PDS understands that the WMBC does their trail work with volunteer members, *primarily in the winter months*.
- Their practice has been to *limit their work to a maximum of 1,000 linear feet and a width of 4 feet of exposed soil at any given time* before closing up that portion and moving on to a new portion (basically what they can achieve in a weekend).
- They generally construct or reconstruct trails *after an area has been logged, but prior to its replanting*. In timing it this way, they can minimize impacts, as the area is already disturbed from the timber removal, and won't disturb new trees.

Programmatic Land Fill and Grade Permit

- In June of 2022, WMBC applied for a programmatic LFG permit for the maintenance and reconstruction of trails damaged during forest practices, and construction of new bike trails within the Galbraith Mountain trail system.
- With this programmatic LDP the WMBC engaged a professional civil engineer to draft construction plans, including recommended stormwater Best Management Practices (BMPs).
- WMBC proposed to meet all current code requirements, *including the seasonal moratorium on exposed soil*.
- Whatcom County approved this programmatic permit on January 20, 2023, which is good for 5 years.

Concerns of our Watershed Partners

- At the onset of this project, the staffs of all agencies with jurisdiction were notified and numerous staff meetings held.
- *Most are opposed to this amendment*, as it would in all likelihood lead to more phosphorus (and other pollutants) entering the lake.
- The Lake Whatcom regulations were developed after a lot of contentious work but were ultimately adopted *based on the principal that everyone* (homeowners, recreationalists, builders, governments, etc.) *would be treated the same*.
- *Parity* was big a concern in adopting the regulations, and there's concern that if we make exceptions for one group, others (e.g., homeowner, builders) would argue for exceptions to their activities as well.
- These regulations (along with those in the City) have become a cornerstone of the Lake Whatcom Management Program, the Lake Whatcom TMDL, and the County's NPDES permit.

Potential Solution

- Based on Council's direction, the WMBC's description of how they work on trails, and the concerns and suggestions raised by our watershed partners, a possible solution may be:
 - Within the Commercial Forestry district only: The maintenance, reconstruction, and construction of trails, subject to the following standards:
 - The applicant has applied for and received a programmatic Land Disturbance Permit;
 - Land disturbance at any given time shall be limited to a maximum of 1,000 linear feet and a width of 4 feet of exposed soil;
 - Construction of new trails shall only be performed in conjunction with the property owner having received and implemented a Class I, II, or III Forest Practice Application, after timber removal has occurred but prior to reforestation;
 - Stormwater Best Management Practices shall be used; and,
 - No work shall be done in critical areas or their associated buffers.

PDS Seeking Direction

- Based on the positions of our watershed partners, *PDS cannot recommend approval* of this proposal.
 - Under current code, trails can still be built/repared through a programmatic permit, just not as fast as WMBC would like.
- Options for Council:
 - PDS continues processing, taking it to the Planning Commission and Council for hearings; or,
 - Council removes this item from the docket.